

**Meeting Minutes**  
**Zoning Board of Adjustment**  
Wednesday, September 3, 2014  
Ankeny City Hall – City Council Chambers  
410 W. First Street, Ankeny, Iowa

**CALL TO ORDER**

The September 3, 2014 regular meeting of the Zoning Board of Adjustment was called to order at 5:00 pm by Chairman M.Ott. Members present: C.Dissell, B.Friest, N.Sungren, M.Ott, K.Tomlinson. Staff present: E.Bodeker, E.Carstens, E.Jensen, T.Kuhn.

**AMENDMENTS TO THE AGENDA**

There were no amendments.

**MINUTES OF THE AUGUST 19, 2014 MEETING**

Motion by K.Tomlinson to approve the meeting minutes as submitted. Second by M.Ott. Motion carried 4 – 0- 1 (abstain: C.Dissell).

**COMMUNICATIONS / CORRESPONDENCE**

M.Ott acknowledged correspondence was received and will be filed as part of public hearing #14-32.

**BUSINESS ITEMS**

**#14-31      Branden North**  
**3304 SW 35th Street**  
**Lot 35, Coves West Plat 4**  
**RE: Side Yard Setback**

Chairman M.Ott opened the public hearing.

Branden North, property owner at 3304 SW 35<sup>th</sup> Street stated that they hired a contractor to do an addition to their home and the addition was permitted based on setbacks shown on city “plotting maps”. During the course of construction, footing inspections were called for and at that time it was determined by the city inspector that the setback was not the required 8 feet, for a 2 story dwelling, at which time construction was halted. Mr North said he went to the Planning & Building Department to file for an easement at which time he expressed his concern for the safety of neighborhood children with the open holes and rebar. He said he was told by zoning staff that it should not hold up construction, so they went ahead and poured the footings and foundation. Following that he received further notification from the City that construction should be halted pending a decision by the Zoning Board of Adjustment. He said he halted construction, secured the site with orange fencing and hired a surveyor to locate the property pins and determine how much of a variance would be required. At that time, it was discovered that the plot plan on file with the City was inaccurate, the house was placed 3 feet closer to the east property line than shown on the drawing. Mr.North said that with the addition, there will be a 4’6” setback rather than the required 8 foot setback; he is asking for approval of a 3’6” variance. He said he spoke with each neighbor within the City’s 250 foot notification area, and presented to the Board a document containing the signatures of those neighbors. He explained that he is only doing this to better the value of his property and his neighborhood because the 3<sup>rd</sup> stall will allow his boat to be parked inside rather than sitting in the driveway.

M.Ott asked if any neighbors expressed concern. Mr.North said he received no negative comments.

B.Friest asked if there are 3 car garages in the neighborhood. Mr.North responded that it's about a fifty-fifty split. He added that he has taken extra steps to make sure the addition blends in with the home with a hip roof design and roofing and vinyl siding to match the existing home; the new garage will be set 2 feet back from the existing garage. He said the slab shown on the aerial has been removed; it extended further to the east property line than the new foundation. The new foundation lines up with the shed shown on the aerial, the shed has now been relocated to the rear of the property.

B.Friest asked if the electric meter is on the east side of the house. Mr.North said that all of the utilities are on the west side.

**Staff Report:** E.Bodeker presented an aerial map identifying the location of the property and stated that the request is for a 3 foot 6 inch variance to allow a 4 foot 6 inch side yard setback at 3304 SW 35th Street. The subject property is located in the Coves West development, west of NW 16th Street (county), south of SW Oralabor Road and is zoned R-3 restricted to single family residences. The required setback for an R-3 two story residence is a minimum of 8 feet with a total side yard setback of 17 feet. The proposal is to allow a 4 foot 6 inch side yard setback for a proposed garage and addition. Building permits for two additions and a garage addition were submitted and issued. During the permit review, a voice mail was left for the contractor making him aware of the 8 foot setback instead of the 7 foot setback shown on the permit applications. During construction the contractor called the building official and said the house was actually 3-4 feet east of where it was shown on the site plan submitted with the permit applications. The building official asked that the property pins be located to determine how much room there was in the side yard, reminding the contractor that the minimum required setback was 8 feet. The contractor asked about a variance and the building official suggested that he first find the property pins, then speak to planning staff about the variance request process. The property owner stopped by the Public Services building and talked to the building official and planning staff. The building official explained where the pins on the property might typically be located and planning staff explained the variance process to the property owner. The building official suggested work on the site be stopped until the homeowner's request was heard by the Board of Adjustment, as holes had already been dug for footing & foundation. Sometime after that discussion, the foundation for the addition was poured. Staff received the variance request and, working with the property owner, suggested he have his property surveyed to find the property line so a specific variance request could be made. The homeowner notified staff when the survey was complete and requested a 3 foot 6 inch variance to allow a side yard setback of 4 feet 6 inches. The staff position is to grant the requested variance for the 4 foot 6 inch side yard setback, based on a determination that the resulting structure is in harmony with the intended spirit and purpose of the Ankeny Municipal Code.

K.Tomlinson asked if there are any fire concerns, as she understood that was one of the reasons for separation between homes. E.Carstens stated that there are five foot setbacks in other areas in the community; fire code generally requires a ten foot separation.

C.Dissell asked how far the neighboring home is from the property line. E.Bodeker responded that she believes it is near 10 feet.

B.Friest asked if the house was built too far to the east. E.Carstens said that the site plan submitted with the original house construction showed incorrect setbacks, the plan was used by the new contractor and submitted with the application without realization that the plan was wrong. E.Bodeker presented the plat drawing and the site plan submitted with the permit applications.

B.Friest asked if the west side setback is 16 feet. E.Bodeker responded that that was not verified.

Shane Zekucia, property owner at 3220 SW 35th Street, next door to the subject property said he has no reason to oppose the variance request. N.Sungren asked if he has any concerns that a garage so close to his property line might have a negative impact on any future sale of his home. Mr.Zekucia responded that he has considered it, but has no concerns because it is against the garage side of the house and there are no windows.

Mark Caples, 3409 SW Fox Run Drive, stated that his rear yard abuts the subject property and he and his family have no issues with the easement.

Motion by C.Dissell to close the public hearing and receive and file documents. Second by B.Friest. All voted aye. Motion carried 5 – 0.

K.Tomlinson asked about the location of the new driveway. Mr.North illustrated the location on an aerial stating that it would extend no further to the east than the garage door, tapering back to the sidewalk; the approach will not be expanded.

B.Friest said that it appears the house was set wrong. K.Tomlinson said she agreed, but is not sure that is a hardship. M.Ott said his concern was if there would be any opposition; there is none and given the landowner most impacted is in favor, he would have no problem with this. B.Friest added that it is a pretty good sized lot as well, depth wise. C.Dissell said that there is adequate separation between homes with the side yard of the adjacent home.

**Board Action on Filing #14-31 for property at 3304 SW 35<sup>th</sup> Street**

Motion by B.Friest to grant the 3 foot 6 inch variance to section 192.05 (3) (D) to allow a 4 foot 6 inch side yard setback at 3304 SW 35th Street based on a determination that the resulting structure does not impair adequate supply of air and light, does not increase the public danger of fire, or diminish property values and that this request is in harmony with the intended spirit and purpose of the Ankeny Municipal Code. Second by M.Ott. Motion carried 4 – 1 (Nay: K.Tomlinson)

**#14-32            Cabaret Ankeny, LLC  
                     2785 N Ankeny Blvd., Suite 18 & 19  
                     Briarwood Plat 17 Lot 3  
                     RE: Special Use Permit**

Chairman M.Ott opened the public hearing.

Andrew Martin, 514 NE Georgetown Blvd., owner of Cabaret located at 2785 N Ankeny Blvd. said that they are asking to increase the seating on the patio from 32 to 40 seats and to expand hours from 9:00 am to midnight daily and for automatic staff approval. He added that Cabaret has had a very clean record since the business changed ownership from Tonic and they have completed some of the promises they made to the Board; they have installed a berm on the west side of the patio, sod will be added along with foliage. He asked that the Board shelve the negative aspects of the former business and consider the improvements to Cabaret stating that this is the 4<sup>th</sup> time he has come before the Board demonstrating a good track record and would like administrative staff approval in the future.

M.Ott asked for an explanation regarding installation of the berm. Using photos taken by staff from the parking lot and the photos submitted with the application, Mr.Martin explained that the berm runs along Highway 69 and tapers down to the sidewalk. The patio sits below the level of Highway

69 and the sidewalk. The existing evergreens were removed; and will not be replaced. He said he has worked with Earl May to develop a plan and intends to plant 5-8 lilac bushes that will grow 4 – 5 feet tall and 4 - 5 feet wide and 1 – 3 service berry trees that will grow 20 to 25 feet tall – all are quick growing to buffer sound and light. The plantings will be placed in area between the patio service door and the northernmost townhome building on the west side of Highway 69.

C.Dissell asked what the top elevation of the berm is in relation to the patio. Mr.Martin said he believes it is 3 plus feet.

B.Friest asked if the patio area will be larger or if they are just adding additional seats. Mr.Martin said there is no change to the patio size, they are just asking for 40 seats.

B.Friest asked if there are speakers on the patio. Mr. Martin said there are speakers on the south side on the wall intended to allow for normal conversation over the music. B.Friest asked about the age of the clientele. Mr.Martin responded that it varies, 21 – 60.

**Staff Report:** E.Bodeker reported that applicant is requesting a revised special use permit to commence immediately, to comply with Ankeny Municipal Code Chapter 44, Noise control; to alter the hours of operation to 9 AM-12 AM daily; to expand their seating from 32 chairs to 40 chairs and for their Special Use Permit to be up for automatic staff approval. The Board approved a revision to the Special Use Permit on April 22, 2014 with the conditions of: 1).Compliance with Ankeny Municipal Code Chapter 44. 2).Hours of operation between 10:00 A.M – 10:00 P.M Sunday through Thursday and 10:00 A.M, - 11:00 P.M Friday, Saturday, the Thursday of Summerfest, and on the eve of all and all observed federal holidays. 3).Seating for up to 32 chairs. and 4).The applicant must come before this board prior to their liquor license expiring to reevaluate the conditions approved. The proximity of the outdoor service area to a residential zone district and the use of sound, other than sound arising from conversation are the conditions which require the establishment to obtain a Special Use Permit. The Cabaret property is zoned C-2. A developed R-3, Multiple-Family Residence District, is located on the west side of N Ankeny Blvd, approximately 225 feet from the outdoor service area. The outdoor service area is enclosed on the south and west with a retaining wall that steps down to the north. A wrought iron fence encloses the outdoor service area from the parking lot. Recently, a berm was installed on the west side of the outdoor service area between the patio and N. Ankeny Blvd. The applicant is also proposing to plant foliage. Staff did not review any grading changes so it is difficult to report on exactly what has changed in terms of grading and elevation on site. Pictures of the site from July 27, 2009 and from August 27, 2014 were included in the meeting packet. Cabaret has not had any complaints or violations from the building department or with the fire department. The police department has had 4 calls related to noise complaints regarding Cabaret. All of the complaints were generated during Cabaret's outdoor concert events on July 5th and 18th, which require City Council approval. There were no formal complaints in regards to everyday use of the outdoor service area. The staff position is to approve the revised special use permit for an outdoor service area with the proposed conditions with the exception of the automatic staff approval. Staff suggests that because conditions are changing that the applicant comes back to the Board for renewal. If there continues to be no issues with the outdoor service area between now and the renewal, the Board could consider automatic staff approval.

K.Tomlinson asked what the maximum number of chairs would be in the outdoor patio area.

E.Bodeker responded that that is based on square footage; 40 is the current request. E.Jensen stated that the building official and fire reviewed the application without comment.

Linda Sickerson property owner at 2719 NW Heritage Ave., identified the location of their home on the aerial adding that they are the only ones that haven't given up fighting this issue; "they have no choice – it's their home". She presented a photo of the berm taken from the sidewalk directly in front of the patio illustrating that the berm does not provide any buffering for them. She said that the design of the patio is similar to an amphitheater in terms of projecting sound. She stated that she called the police with complaints regarding patio noise on two occasions, once on July 12<sup>th</sup> at 12:20 am and once on July 19 at 11:40 pm. On July 12<sup>th</sup> the front and patio doors were propped open and there were lights and people on the patio. Mrs Sickerson provided the business cards and ID numbers provided by the police officers on both occasions. (ANP14020715) & (ANP14019931). Mrs.Sickerson stated that as senior citizens, they cannot afford to take the loss that would result in selling their house and moving because they no longer have the years to make that up; they have had to deal with this problem for 7 years. Mrs Sickerson said that in the minutes from the April 2014 Board of Adjustment meeting city staff stated that the commercial zoning on the east side of Highway 69 was in place prior to the residential zoning on the west side, which she believes to be untrue according to the Polk County Assessor's site. E.Carstens explained the land was zoned commercial in 1982; the property may not have been assessed by the county as commercial until development occurred. She believes the City should not have allowed the outdoor service area so close to a residential district. She said although Cabaret has been managed better than Tonic, it is still not good and she is tired of being awoken at night by loud music and voices. She asked that the revisions be denied. M.Ott asked Mrs.Sickerson what action was taken by the police when she called with complaints. She said they came to the house, the police officer on July 12<sup>th</sup> went into the bar and told them to quiet down. She added that she called Cabaret on July 12<sup>th</sup> prior to calling the police, but was hung up on. She said earlier in the year she went over to Cabaret around midnight because the music was so loud and people were on the patio and was told that nothing could be done, however the noise did subside.

B.Friest asked what the crowd is like during week nights. Mrs.Sickerson said that Friday and Saturday nights are bad, weekdays are not bad.

Mike Sickerson, 2719 NW Heritage Ave., said that the parking lot parties have been so loud that decibel levels could not be checked correctly. He said the band attempted to cover the speakers with blankets because the noise was so loud coming across the street. M.Ott advised Mr Sickerson that the Special Events and Noise Permits are approved by City Council, this Board has no involvement in that process. He added that the Zoning Board of Adjustment sent a letter to the City Council suggesting that the neighborhood be noticed prior to approval of the event or permit.

Mr. Martin, in response to the audience comments, stated that they worked with a sound consultant on the proposed berm and landscaping changes to mitigate the noise and light. He agreed that the berm is lower when looking directly west, the berm was built as high as possible to allow for mowing and the plantings. The berm is actually a full story above the business location. He said they have hired two different sound companies to measure sound levels across the street, including the outdoor events to make sure they are in compliance. Mr.Martin said he believes it is worse to allow people to gather and smoke at the front entrance than on the enclosed patio. He said they do not have bass music on the patio, when the patio service door opens briefly, the music can be heard. Mr Martin said the inside seating capacity is approved for 87 capacity, which is actually a smaller area than the patio. The lights on the building are building lights provided as part of the plan by Kimberley Development and are required for safety and fire exists. Mr.Martin said that July 12<sup>th</sup> was

SummerFest weekend and after the beer garden closes, thousands of people disperse into the community and it is difficult to control.

M.Ott asked if the doors may have been propped open. Mr.Martin said that is not his policy, the doors should never be propped open. M.Ott asked about Mrs Sickerson being hung up on. Mr Martin said he had no knowledge of that, it is however difficult to hear the phone in a bar late on a Saturday night. He said he is investing a great deal to make this business a success and be a good neighbor. He said he realizes there were issues in the five years prior to his ownership, that is not who they are.

K.Tomlinson asked about the sound on the patio, wondering if the music is turned up too loud. Mr Martin said they currently have sound on the patio at all times, there is a setting that it should not go above and should not be able to be heard across the street. The outdoor concerts are a separate deal with different requirements and they do about 2 of those a year.

Correspondence received and filled:

Letter from Ginger Allen, 2702 NE Oak Dr. #7 writing that music after 10 pm is a real concern.

Motion by C.Dissell to close the public hearing and receive and file documents. Second by N.Sungren. All voted aye. Motion carried 5 – 0.

C.Dissell commented that he initially thought that automatic staff approval may be in order, however, with the request for an extension of hours, he believes the Board may want to have the renewal brought back at least one more time to see how the extended hours work. He asked if it might be appropriate to limit the hours allowed for amplified sound on the patio. K.Tomlinson commented that she believes that would be difficult to enforce.

B.Friest said he has a hard time understanding this situation because the City has allowed these places all over town and the Board doesn't receive complaints from them. C.Dissell said he believes this has to do with the larger outdoor events that occur here and there is a carryover with those coming to this Board. K.Tomlinson added that Cabaret is a bar and most other outdoor service areas feature restaurants; adding that it may be louder inside Cabaret, then the typical restaurant. C.Dissell offered that there may be more smokers that congregate outside adding to the noise.

M.Ott said he has trouble with the fact that the police were contacted several times and yet there are no formal reports. E.Bodeker explained that the because of the way the Police Department CAD system works, the report includes only incidents found from searching on the Cabaret address, not all complaints are crossed referenced by the complainant with the offending business.

C.Dissell said the change from 32 to 40 chairs is not an issue for him; it's the hours, if they stay the same, possibly automatic renewal; if the hours are extended, they need to come back. B.Friest suggested that during the week, the hours remain at 10 pm; add an additional hour on the weekend and require them to come back in a year. K.Tomlinson said there should be no sound on the patio. She stated that she believes Cabaret is trying to do a number of things right; however she believes there is little that can be done if the sound is allowed to be amplified on the patio – sound carries, especially with the design of the patio.

**Board Action on Filing #14-09 for property located at 2785 N Ankeny Blvd., Suites 18 & 19.**

Motion by C.Dissell that the Zoning Board of Adjustment grant a revised Special Use Permit for an outdoor service area in accordance with Sections 130.07 and 196.02 (1) (I) to Cabaret Ankeny,

LLC, at 2785 N Ankeny Boulevard, Suites 18 &19, to run concurrently and terminate with a liquor license for said establishment subject to the following conditions:

1. Any sound, amplified or otherwise, from the outdoor service area shall not be at a level greater than necessary to reach the audience and shall not be of such a volume so as to interfere with normal conversation on adjacent properties and shall be in compliance with Ankeny Municipal Code Chapter 44, Noise Control.
2. Hours of operation between 9:00 A.M.-10:00 P.M. Sunday through Thursday and 9:00 A.M.-12:00 AM Friday and Saturday, Thursday of Summerfest and on the eve of all observed federal holidays.
3. Seating for up to 40 Chairs.
4. The applicant must come before this Board prior to their liquor license expiring to reevaluate the conditions approved.

Second by B.Friest. Motion carried 3 – 2. (Nay: M.Ott, K. Tomlinson)

## **REPORTS**

There were no reports.

There being no further business, the meeting adjourned at 6:20 pm.

Submitted by, Trish Kuhn,

Recording Secretary,  
Zoning Board of Adjustment